SUPREME COURT, U.S.

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JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM—1966

No. 71

In the Matter of

LANDON ZUCKERMAN and SAM HABER,

Petitioners,

against

SAMUEL GREASON,

Respondent.

TO THE HONORABLES, THE CHIEF JUSTICE OF THE UNITED STATES, AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES.

PETITION FOR REHEARING

HAROLD M. SPITZER,
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PETITION FOR REHEARING OF DECISION AND ORDER WHICH GRANTED PETITION FOR WRIT OF CERTIORARI

The above named respondent, Samuel Greason, respectfully prays that this court grant a rehearing of its decision and order of February 13, 1967 which granted the petition for a writ of certiorari, vacated the judgment of the Appellate Division of the Supreme Court of New York, Second Judicial Department, and remanded the case

to that court for reconsideration in light of *Spevack* v. *Klein*, 385 U. S. 511, insofar as said decision and order may apply to Sam Haber, one of the above named petitioners.

Reasons for Granting Rehearing and Denying the Writ as to Petitioner Sam Haber

1. The petitioner, Sam Haber, is in an entirely different position than the petitioner, Landon Zuckerman, with respect to the doctrine enunciated in *Spevack* v. *Klein*. Attention is respectfully directed to a discussion of this matter contained in the brief of the respondent, Samuel Greason (pp. 13 and 14) heretofore filed in this court in opposition to the petition for writ of certiorari. As it is there pointed out, Mr. Haber did not at any time invoke the Fifth Amendment or any other Constitutional privilege. (Transcript of Testimony, p. 474 and pp. 524-529.) When Mr. Zuckerman gave his legal reasons for refusing to turn over the financial information demanded (Ex. 5, Transcript of Testimony, p. 67) Haber objected to Zuckerman's statement and refused to join in it and stated that he disagreed with it. (Transcript of Testimony, pp. 69 and 74.) As the Referee stated,

> "I find that Mr. Haber answered every question propounded of him, without objection, and was at all times ready and willing to turn over to the Judicial Inquiry any books, records of financial data. Mr. Haber had no knowledge or information that Mr. Zuckerman would refuse to turn over the records requested by the Judicial Inquiry, and that he emphatically disagreed with Mr. Zuckerman's position of refusing to answer and turning over the records requested by the Judicial Inquiry (s.m. p. 529)." (Referee's Report, p. 10.)

As a result, and quite properly, of course, only Mr. Zuckerman was found guilty of Specification 5A (failure to cooperate with the court, etc.).

2. Attention is respectfully called to the fact that the judgment of the Appellate Division of the Supreme Court of New York, Second Judicial Department applies to both Zuckerman and Haber, although Zuckerman was found guilty of four specifications and Haber of three specifications and different sanctions were imposed on each, namely, disbarment of Zuckerman and suspension for five years of Haber. If said judgment is vacated it would therefore be vacated as to Haber as well as Zuckerman. Reconsideration as to Haber in the light of *Spevack* v. *Klein* would be futile since the doctrine of that case does not apply to Haber.

CONCLUSION

For the reasons set forth above and in the brief in opposition to petition for writ of certiorari, it is respectfully urged that rehearing be granted and that upon such rehearing the writ be denied as to petitioner Sam Haber.

Respectfully submitted,

HAROLD M. SPITZER,
Attorney for Respondent,
Chief Counsel, Judicial Inquiry
on Professional Conduct.

Certificate of Counsel

I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay and is restricted to grounds specified in Rule 58 of the rules of this court.

HAROLD M. SPITZER,
Counsel for Respondent.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966.

ZUCKERMAN ET AL. *v.* GREASON.

ON PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE DIVISION OF THE SUPREME COURT OF NEW YORK, SECOND JUDICIAL DEPARTMENT.

No. 71. Decided February 13, 1967.

PER CURIAM.

The petition for a writ of certiorari is granted. The judgment is vacated and the case is remanded to the Appellate Division of the Supreme Court of New York, Second Judicial Department, for reconsideration in light of *Spevack* v. *Klein*, 385 U. S. 511.

MR. JUSTICE CLARK, MR. JUSTICE HARLAN, and MR. JUSTICE STEWART would affirm the judgment below for the reasons set forth in MR. JUSTICE HARLAN's dissenting opinion in *Spevack* v. *Klein*, 385 U. S. 520.

MR. JUSTICE WHITE dissents for the reasons stated in his dissenting opinion in *Garrity* v. *New Jersey*, and *Spevack* v. *Klein*, 385 U. S. 530.